the legacies, he should have thought the daughters entitled to what they claimed.

None of the cases referred to by the plaintiff are at all in conflict with the views here expressed.

In *Pink* v. *DeThuisey*, 2 Mad. 157, the executor was directed to give the legatees the principal of the legacy "only in case of an establishment or acquisition for him which seems advantageous to my executor, this disposition being an essential condition of the legacy I make to the said" legatee; and it was held, taking the whole will together, that as to the principal of the legacy, the intention was to give it on condition and not absolutely.

In *Malcolm* v. *O'Callaghan*, 2 Mad. 349, the testator gave 2000*l.* to his two daughters, to be paid on marriage, with consent of his executors, and if either died before twenty-five or marriage with consent, her legacy went to the other. One married before twenty-five without consent, and it was held that the intent was clear to make marriage with consent a condition precedent, and that, there being no bequest over, the condition must be complied with in order to entitle her to claim the legacy: *Atkins* v. *Hiccocks*, 1 Atk. 500, is to the same effect.

Judgment affirmed, and ordered to be certified to the Probate Court.

All concur.

ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]

SUPREME COURT OF ARKANSAS.[2]

SUPREME COURT OF FLORIDA.[3]

SUPREME COURT OF GEORGIA.[4]

SUPREME JUDICIAL COURT OF MAINE.[5]

ACTION. See *Bills and Notes.*

AGENT.

Implied Authority to Collect—Notice—Bill-head.—An agent who has

[1] Prepared expressly for the American Law Register, from the original opinions filed during Oct. Term, 1885. The cases will probably appear in 118 U. S. Rep.

[2] From B. D. Turner, Esq., Reporter; to appear in 46 Ark. Rep.

[3] From D. C. Wilson, Esq., Clerk. The cases will probably appear in 21 or 22 Florida Reports.

[4] From J. H. Lumpkin, Esq., Reporter. The cases will probably appear in 73 or 74 Georgia Reports.

[5] From J. W. Spaulding, Esq., Reporter; to appear in 78 Me. Rep.

authority to contract for the sale of chattels, has authority to collect pay for them at the time, or as a part of the same transaction, in the absence of any prohibition known to the purchaser: *Trainer* v. *Morison*, 78 Me.

Knowledge of this prohibition may be inferred from the circumstances of sale, or from customary usages of trade known to the parties: *Id.*

Persons dealing with an agent have a right to presume that his agency is general, and not limited, and notice of the limited authority must be brought to their knowledge before they are bound to regard it: *Id.*

The notice of the limited authority of the agent, in this case, printed at the top of the bill accompanying the goods sold, and not seen by the purchasers, is not so prominent as to hold them at fault in not observing it: *Id.*

Authority to Collect.—The rule that the authority of an agent to sell goods imports the authority to receive the proceeds of the sale, is limited to cases where there are circumstances or appearances which give color to the belief in the purchaser that the authority exists: *Meyer* v. *Stone*, 46 Ark.

An agent to sell goods who has possession of them and delivers them to the purchaser, has authority to collect the purchase price; but if he is merely employed to sell, and has no possession of the goods, he has no authority to receive the price; and payment to him will not discharge the purchaser unless there is a known usage of trade or course of business to justify him in making it: *Id.*

Bills and Notes.

Draft obtained by Fraud—Action—Evidence.—Although the contract between the parties may have been embodied in a draft, with bills of lading attached, drawn by the defendant in favor of the plaintiff below, if the proof shows that the borrower gave it with intent to defraud the lender, and the lender became aware of the latter, it had the right to repudiate the draft as void, and sue on the account for money loaned, and to put in evidence the draft, bills of lading, letters of the drawer to the drawees, and sayings of the drawer showing or tending to show the intent to defraud: *Massengill* v. *First Nat. Bank*, 73 or 74 Ga.

Draft—Conditional Acceptance—Excuse of Performance of Conditions—Action.—The declaration upon a conditional acceptance must allege a performance of the condition: *Myrick* v. *Merritt*, 21 or 22 Fla.

An allegation of a delivery of a house and that the acceptor has been in possession, is not a sufficient allegation of performance of the conditions that the house has been "finished according to contract and delivered," upon which a draft is payable. The allegation that the plaintiff, the payee, gave the acceptor notice that he held himself ready to complete the house according to contract, or to pay her a reasonable sum for his failure if she would point out to him the deficiencies or omissions, and that she refused to do so, and that she refused to permit him to enter the house for the purpose of completing it according to contract, is not a sufficient averment of performance of the conditions named in the acceptance, whether considered alone or in connection with above allegation of delivery to and possession by the acceptor: *Id.*

If, in any case of a non-performance by a drawer of the conditions named by the acceptor in the acceptance, the payee has a right of action against the acceptor who refuses to permit him to perform the conditions which the drawer was under contract to perform, such right of action is not upon the acceptance, but is one of special action on the case for damages occasioned by the acceptor's refusal and prevention of performance by the payee: *Id.*

Draft—Acceptance—Payment without Delivery of Draft—Invalid Consideration—Compounding Felony.—The acceptor of a draft—non negotiable—may pay the same to the payee thereof, after its maturity, even though the draft be not produced and delivered up to the acceptor at the time of payment, provided the acceptor has had no notice of the transfer of the draft by the payee to a third person, and such payment would be a valid defence against the note, should suit be brought thereon against the acceptor by another person: *Johnston* v. *Allen*, 21 or 22 Fla.

If payment is made by the acceptor to the payee, and the draft be not delivered up at the time of payment, and suit is afterwards brought thereon against the acceptor by another holder claiming to be the transferee thereof, the burden of proof rests upon the plaintiff in the action—the defendant having proved the payment—to show that the defendant had notice of the transfer before the payment was made: *Id.*

Where a party under arrest for embezzlement gives a draft for the amount embezzled to the person from whom it was embezzled, such draft is not invalid unless it was agreed by the parties that in consideration of giving said draft the prosecution should be suppressed: *Id.*

Where a non-negotiable draft, valid in its inception, and on which the payee could have maintained an action against the acceptor, was loaned by the payee to a person under arrest for embezzlement, to enable him to compromise with the party who caused his arrest, and such draft is transferred to such party, who brings suit thereon against the acceptor, such acceptor cannot resist payment of the draft on the ground that it was transferred to the holder in consideration of his agreeing to suppress the prosecution of the person to whom it was loaned by the payee: *Id.*

Common Carrier.

Delivery of Goods.—A carrier by water may deliver goods on the wharf, but generally the consignee is entitled to notice of their arrival, that he may remove or safely store them. Notice, however, may be waived by the previous course of dealing between the parties: *Turner* v. *Huff*, 46 Ark.

A carrier by water is not responsible for the loss of goods delivered at the landing-place at which the consignee receives his goods, though there be no warehouse there and the consignee have no notice of their arrival, if it be the uniform usage and course of business of carriers in the same trade to leave goods at the landing-place without notice and the manner of delivery conform to the custom of the locality; and this whether the shipper or consignee knew of the usage or not: *Id.*

Live Stock—Damages—Stipulation against Liability.—Carriers of live stock are liable as common carriers and as insurers to the same extent as carriers of merchandise, except as to injuries caused by the

animals to themselves or to each other; losses that are caused by their inherent vices and propensities: *St. L., I. M. & S. Ry.* v. *Lesser*, 46 Ark.

A common carrier cannot lawfully stipulate for exemption from responsibility for the negligence of himself or his servants, or the insufficiency of his cars for the transportation of the freight deposited in them: *Id.*

When the shipper of live stock, in consideration of reduced rates, contracts with the carrier that in case of a total loss of any of the stock, the valuation of any animal should not exceed a specified sum, then in case of a partial injury the damages will be the proportion of that sum the animal was lessened in value by reason of the injury: *Id.*

Transportation beyond Own Line—Contract—Negligence.—When the goods are received by a carrier to be transported beyond the terminus of its line, and delivered at a particular place and to particular persons at such place, without more, a contract is implied that the carrier will cause such goods thus delivered to it to be carried to the place of destination safely, without damage or hurt, and he will be liable to the consignor, for failure to perform his contract, for any damages which may arise therefrom to the party injured: *Talvey* v. *Georgia Rd.*, 73 or 74 Ga.

To ascertain if any contract was made by the first carrier to transport beyond its line to the place of destination, the bill of affreightment may be looked to, and *aliunde* evidence may also be introduced, such as payment of all the freight to it, the way bill and designation of all the lines over which the goods are to go, and the apportionment by the first carrier of the amount which each line is to be paid: *Id.*

CONFLICT OF LAWS. See *Usury*

Administration of Decedent's Property—Decision of Foreign Probate Court—Domicile.—The personal property of a deceased person is to be administered according to the law of his domicile. The law of the country of which he is a subject regulates the succession. This law applies to mortgages on land as well as to other personalty: *Thomas* v. *Morrissell*, 73 or 74 Ga.

Issues passed upon by a probate court of another state cannot be opened and inquired into again by a proceeding in our courts substantially between the same parties and involving the same issue, and there is nothing in the question of domicile to take it out of the general rule: *Id.*

CONSTITUTIONAL LAW. See *Criminal Law.*

The Fourteenth Amendment—Corporations.—The provision in the Fourteenth Amendment to the Constitution of the United States, which forbids a state to deny to any person within its jurisdiction the equal protection of the laws, applies to the Southern and Central Pacific Railroad Companies: *Santa Clara Co.* v. *South Pac. Rd.*, S. C. U. S., Oct. Term 1885.

Decisions of the State Courts when binding upon the Supreme Court of the United States—Distinction between Office de facto and Officer de facto.—Upon the construction of the constitution and laws of a state, the Supreme Court of the United States, as a general rule, follows the

decisions of the highest court of the state, unless they conflict with or impair the efficacy of some principle of the federal constitution, or of a federal statute, or a rule of commercial or general law; on many subjects they are necessarily conclusive, such as relate to the existence of her subordinate tribunals, the eligibility and election or appointment of their officers; and the passage of her laws: *Norton* v. *Shelby County*, S. C. U. S., Oct. Term 1885.

Upon considerations of policy and necessity, for the protection of the public and individuals whose interests may be affected thereby, validity is frequently given to acts of officers *de facto*, but there can be no officer *de facto* or *de jure* if there be no office to fill, and an unconstitutional act can create no office: *Id.*

Tonnage Tax—Fees under Quarantine Laws—Preference to Ports of one State over those of another.—The requirement that each vessel passing a quarantine station shall pay a fee fixed by the statute for examination as to her sanitary condition, and the ports from which she came, is a part of all quarantine systems, and is a compensation for services rendered to the vessel, and is not a tax within the meaning of the constitution concerning tonnage tax imposed by the states: *Morgan's Steamship Co.* v. *Louisiana Board of Health*, S. C. U. S., Oct. Term 1885.

Nor is it liable to constitutional objection as giving a preference for a port of one state over those of another. Section 9, of the first article of the constitution, is a restraint upon powers of the general government, and not of the states, and can have no application to the quarantine laws of Louisiana: *Id.*

Deprivation of Property without due Process of Law—Sale of Real Estate by Guardian—Failure to enter Bond.—In an action of ejectment the judgment turned on the validity of a sale of land by the guardian of the plaintiff. It appeared that all proceedings for the sale were regular, save that no bond was entered by the guardian, as the statute provided, which the Court of Common Pleas held did not avoid the sale. This judgment was affirmed on appeal to the District Court. The case was then taken to the State Supreme Court, it being averred, among other assignments of error, that the plaintiff in error was deprived of his property without due process of law, contrary to the provisions of the Fifth Amendment of the Constitution of the United States. The Supreme Court, while affirming the opinion of the District Court, took no notice of this assignment. *Held*, that the judgment, nevertheless, involved the decision of the question whether there had been a denial of the right so claimed; and therefore the Supreme Court of the United States had technical jurisdiction; but the judgment was so clearly correct that the motion to affirm should be granted. The failure to enter the bond was at most an error of the court. A state cannot be deemed guilty of a violation of the constitutional obligation referred to because one of its courts, while acting within its jurisdiction, has made an erroneous decision: *Arrowsmith* v. *Harmoning*, S. C. U. S., Oct. Term 1885.

CONTRACT. See *Bills and Notes.*

Liquidated Damages—Partnership.—One partner agreed in writing to sell to a co-partner his interest in the company's property, the pro-

perty consisting of a store and stock of goods (furniture) therein, and some other personal property, the whole worth about twenty-five thousand dollars, the sale to be at cost for most of the property, the balance to be taken at an appraisal if the parties could not agree on its value, the terms of the sale to be cash on delivery, and either party who should break the contract was to forfeit to the other the sum of five hundred dollars: *Held*, That the five hundred dollars were intended by the parties to be liquidated damages: *Maxwell* v. *Allen*, 78 Me.

CRIMINAL LAW. See *Errors and Appeals.*

Accomplice—Evidence.—An accomplice is a competent witness, and a conviction may be had upon his uncorroborated testimony if it satisfies the jury beyond a reasonable doubt: *Bacon* v. *State*, 21 or 22 Fla.

There is no such inflexible rule of law as that no person can be convicted on the testimony of an accomplice unless corroborated by other evidence. It is a question for the jury who pass upon the credibility of an accomplice, as they do upon that of every other witness. The statements of the accomplice should be received with great caution, and courts should always so advise the jury, but if the testimony carries conviction, and the jury are convinced of its truth, they should give to it the same effect as would be allowed to that of a witness who is in no respect implicated in the offence: *Id.*

Evidence—Accomplice.—It is not error to charge that, if a witness sworn in the case is an accomplice, his testimony without more cannot convict, but if the jury believe from the evidence that the witness was not an accomplice, then his evidence alone may convict; and this would be true though he was charged in the indictment with the crime, and his own testimony alone showed he was not an accomplice, and though he was present, if that presence was constrained, or he was enticed to be there by a false claim of defendant and another to the property and an anticipated lawsuit about it: *Bernhard* v. *State*, 73 or 74 Ga.

Principal and Accessory—When latter may be tried.—A plea of guilty by the principal offender, received and recorded, though sentence is not pronounced, is in all essential respects equivalent to a verdict of guilty returned and entered on the minutes, and is such a conviction of the principal as authorizes the court to proceed with the trial of an accessory: *Groves* v. *State*, 73 or 74 Ga.

It is true that the plea, before sentence can be withdrawn, and that a verdict can only be arrested, or set aside for cause shown, whether a judgment has been rendered on it or not. Still, so far as resorted to for the purpose of showing the guilt of the principal, *prima facie* in order to bring on the trial of the accessory they stand on the same footing: *Id.*

Privilege of Counsel—Time for Preparation.—The constitutional provision that every person charged with an offence shall have the privilege of counsel, would amount to nothing if counsel for the accused were not allowed sufficient time to prepare his defence: *Blackman* v. *State*, 73 or 74 Ga.

Where the crime charged was murder, committed early in September,

and the court met on the fourth Monday of the same month, the bill of indictment found on Tuesday and on Wednesday, the court assigned the accused counsel, and announced it would take up the case on Friday thereafter, and counsel asked for a continuance, as they had not had time to confer with the prisoner and prepare his defence, he having been brought from the jail of another county late on Thursday evening before, the continuance or a postponement to a later day should have been granted: *Id.*

DAMAGES. See *Contract.*

Counsel Fees and Expenses.—Expenses of litigation do not fall under the head of punitive or vindictive damages, but stand by themselves: *Moseby* v. *Sanders*, 73 or 74 Ga.

They may be recovered when the defendant has caused the plaintiff unnecessary trouble and expense: *Id.*

DEBTOR AND CREDITOR.

Application of Payments.—It was shown that Holley owed H. & G. a debt which he had given a mortgage to secure; that H. & G. purchased other notes of his without his knowledge, and that he sent them cotton to be credited on his indebtedness; it is most manifest that he intended to pay the mortgage debt, and this being so, the payment should have been so applied; *Holley* v. *Hardeman*, 73 or 74 Ga.

DOMICILE. See *Conflict of Laws.*

EQUITY. See *Usury.*

Practice—Answer—Evidence.—An answer upon oath, to a bill in equity, that does not call for answer upon oath, does not operate as evidence of the facts stated in it: *Clay* v. *Towle*, 78 Me.

Reformation of Contract.—Chancery will not reform a promissory note payable *in futuro*, with ten per cent. interest from date, by adding the words "until paid," though the parties intended it to bear that interest after as well as before maturity, if they omitted the words only because they thought them unnecessary. A contract written as the parties intended it to be written cannot be reformed for their mistake of its legal effect: *Rector* v. *Collins*, 46 Ark.

ERRORS AND APPEALS.

Criminal Law—United States Supreme Court—Twice in Jeopardy—Practice.—The Supreme Court of the United States has jurisdiction to review the judgment of a state court denying that defendant is entitled to immunity from a second trial for the same offence by reason of Art. V. of the Amendments of the Constitution of the United States: *Bohanan* v. *Nebraska*, S. C. U. S., Oct. Term 1885.

Upon a motion to dismiss, this court cannot consider the merits of the question on which its jurisdiction depends, unless there is also a motion to affirm: *Id.*

EVIDENCE. See *Criminal Law.*

Receipt given under Protest.—A receipt is only *prima facie* evidence of what it imports, and may be explained or contradicted by the party

signing it; but a settlement and receipt in full of an unliquidated demand, when made with a complete knowledge of all the circumstances, is a bar to a subsequent action upon the demand, although the creditor accepts the amount paid under protest, and threats of suit for a balance claimed to be due him: *Springfield & Memphis Rd. Co.* v. *Allen*, 46 Ark.

EXECUTOR AND ADMINISTRATOR.

Bond of Executor—Right of Administrator d. b. n. to Sue.—An administrator *de bonis non* is officially interested in his predecessor's bond, to the extent of the unadministered assets; and he may originate a suit on it, provided his interest has been specifically ascertained; otherwise he must have authority from the judge of probate, to bring the action, and cannot rely, therefore, on an authorization given to another person. In either case he must allege such facts in the writ, as will authorize him to bring and maintain the action: *Waterman* v. *Dockray*, 78 Me.

EXEMPTION. See *Surety.*

Partnership Property—Time.—The members of an insolvent firm are not entitled to the exemptions allowed by law, out of the partnership property, after it has been seized to satisfy the demands of the creditors of the firm: *Richardson* v. *Adler*, 46 Ark.

The right to exemption, as head of a family, must exist at the time the creditor's lien attaches. To become a head of a family after an attachment is levied on the property, will not exempt the property from sale under a judgment of condemnation. The judgment lien relates to the levy of the attachment, and perfects the inchoate charge created by the levy, and cannot be displaced by any change in the status of the debtor: *Id.*

GUARANTY.

When acceptance not Necessary—Discharge of Guarantor.—An instrument in writing, appended to a paper purporting to be a bill for merchandise, sold by one Stultz to one Powers, in the following words: "In consideration of seven and a half per cent., I guarantee the above bill to the amount of two hundred dollars. (Signed) A. Solary," which was written by Stultz, and presented by him to Solary for his signature as the conclusion of a negotiation between them, and is signed by Solary and delivered to Stultz, is a guaranty, and not an offer to guarantee, which would require acceptance by the beneficiary, and notice thereof to the guarantor: *Solary* v. *Stultz*. 21 or 22 Fla.

An agreement by the creditor to extend the time of payment of the debt guaranteed sixty days upon the debtor paying him a sum of money he owed him on another transaction, is not based on a good consideration, and will not discharge the guarantor: *Id.*

GUARDIAN AND WARD. See *Constitutional Law.*

HIGHWAY.

Right to plant Trees.—The owner of land upon a public way, may lawfully plant ornamental or shade trees, within the limits of the way, if the public use is not thereby obstructed or endangered: *Wellman* v. *Dickey*, 78 Me.

Trees so planted are a public benefit, and cannot be destroyed without the call of public necessity: *Id.*

Highway surveyors, who destroy such trees without reason or necessity, are trespassers, and if the act is wanton, they are liable for exemplary damages: *Id.*

INJUNCTION.

Municipal Corporation—Usurpation of Franchise.—A bill in equity, and an injunction issued thereon, is not the proper remedy where a municipal corporation has been organized, even though it is alleged that such organization was illegal, and that it was not so organized in conformity to the law: *McDonald* v. *Rehrer*, 21 or 22 Fla.

When a franchise or an office is usurped, an injunction will not lie to prevent such usurpation, even though the respondents have not entered upon the duties of their office. The remedy is at law, by *quo warranto* to be invoked after entry into, or exercise of authority under and by virtue of their election or appointment: *Id.*

Alleged Conspiracy to destroy a Business—Overt Acts—Remedy at Law.—Complainant's bill alleged that he was part owner of a pilot boat; that the captain and other officers of the vessel were duly commissioned as pilots, and that all legal regulations had been complied with; and that the defendants had combined together for the purpose of destroying his business and property by publications in the newspapers, and by divers and sundry suits (mentioning three). The bill also alleged that defendants had formed a pretended partnership, and bound themselves not to serve as branch pilots in a certain district with those outside of the confederation, and that these acts would injure plaintiff's business. The bill prayed for an injunction. *Held*, that the whole gist of the complaint was that the defendants did not treat the plaintiff as having a right to use his vessel as a pilot boat, and had publicly so stated, and that some of the parties mentioned had been subjected to suits for their acts in piloting, and that plaintiff had a full remedy at law: *Francis* v. *Flinn*, S. C. U. S., Oct. Term 1885.

INTEREST. See *Usury.*

LICENSE.

Pedler—Lightning-Rod Vendor.—One who travels through the country, carrying with him all the tools, ladders, &c., necessary to putting up and repairing lightning-rods, charging a certain amount per foot for rods, and a certain amount for putting them up (never having sold any without putting them up), and soliciting patronage from house to house, is not a pedler and subject to penalty for failing to take out county license, as such, in the sense of the law: *Ezelt* v. *Tharsher*, 73 or 74 Ga.

He does not simply sell rods from house to house, which would make him a pedler, but he affixed rods to houses and expended skill thereon, and is rather a skilled mechanic than a pedler: *Id.*

LIMITATIONS, STATUTE OF.

Fraud—Purchase by Administrator—Equity.—A purchase of an intestate's lands at an administrator's sale, by an agent of the adminis-

trator and with his means, who takes the deed in his own name and conveys to the wife of the administrator, is fraudulent, and though not void, the purchase and deeds may be avoided by any one interested in the lands: *McGaughey* v. *Brown*, 46 Ark.

Courts of equity, in cases of concurrent jurisdiction, consider themselves bound by Statutes of Limitations which govern courts of law in like cases, and this rather in obedience to the statute, than by analogy: *Id.*

The rule that the Statute of Limitations will not bar a trust, applies only to express and positive trusts, and not to them where circumstances exist which raise a presumption of the extinguishment of the trust, or where there is an open denial or repudiation of the trust brought home to the knowledge of the parties in interest, which requires them to act as upon an asserted adverse title: *Id.*

The Statute of Limitation will commence against an action for the frauds of an administrator, from the time of his discharge by the probate court: *Id.*

MANDAMUS.

Alternative Mandamus—Municipal Corporation—Levy of Taxes.—If an alternative writ of mandamus shows a *prima facie* case, it is not demurrable: *State* v. *Mayor and Aldermen of Jacksonville*, 21 or 22 Fla.

Where the writ alleges a power in a municipal body to levy taxes, and such power is limited by statute to a certain percentage upon the value of the taxable property, it is not necessary to allege in the writ that the power has not been exhausted. The exhaustion of the power by a previous exercise of it is properly matter of defence to be set forth by the officers who are called upon to exercise the power: *Id.*

Where a levy of taxes is desired by a judgment creditor of a municipality for the payment of his claim, and his right is based upon the ordinary status of a judgment creditor and the power of the board of aldermen to make a levy, a demand upon the proper officers for a levy to pay the judgment must be made before relief by mandamus can be had: *Id.*

MASTER AND SERVANT. See *Municipal Corporation; Telegraph.*

Defective Machinery.—A master's liability for an injury to his servant, caused by defective machinery furnished by the former for the latter's use, is not absolute: *Hull* v. *Hall*, 78 Me.

To render the master liable for an injury to his employee, caused by defective machinery furnished by the former for the latter's use, it must appear that the master knew, or by the exercise of proper diligence, ought to have known of its unfitness, and that the servant did not know, or could not reasonably be held to have known of the defect: *Id.*

Railroad—Employment of Physician by Road Master—Ratification.—A road master of a railroad company, or a conductor on a train, are not so far agents of the railroad company as to be legally authorized to employ physicians or surgeons to attend upon an employee who is injured by the cars of the company, unless they are specifically charged with that duty: *Peninsular Rd.* v. *Gary*, 21 or 22 Fla.

The conductor's direction to the physician or surgeon to extend such

medical aid, or his promise that the same when rendered shall be paid for by the company, do not render such company liable for the same, unless there is proof that he is authorized so to do: *Id.*

A contract by a road master, conductor or other agent without authority, may be ratified by the corporation, and so become binding upon it: *Id.*

The action of the general manager may, by his ratification of such a contract made by a subordinate agent, render the corporation liable thereon: *Id.*

Mortgage.

Ejectment.—A mortgage will not sustain a recovery in an action of ejectment against the holder of the legal title, nor will a deed of conveyance made by a master under a decree in a suit to which the person owning the legal title at the institution of the suit was not a party: *Berlack* v. *Halle,* 21 or 22 Fla.

Certainty in Description.—Though usual, it is not necessary that a mortgage state the amount of the debt to be secured, or that it is evidenced by a note or any other instrument. If it contains a general description, sufficient to embrace the liability intended to be secured, and to put a person examining the records upon inquiry, and to direct him to the proper source for particular information of the amount of the debt, it is sufficiently certain: *Curtis* v. *Flinn,* 46 Ark.

Municipal Corporations. See *Injunction; Mandamus.*

Negligence—Fire Department.—The officers of the fire department of a municipality are public officers, and not the mere servants or agents of the municipality: *Burrill* v. *City of Augusta,* 78 Me.

A city is not liable for the act of the officers of its fire department, unless made so by express statute, or unless the act complained of was expressly ordered by the city government: *Id.*

Negligence.

Burden of Proof of Contributory — Railroads — Platforms and Grounds—Conduct of Party after the Injury.—If the plaintiff, in any case of personal injury, can show negligence on the part of the defendant without, at the same time disclosing the inherent weakness of his own case by reason of contributory negligence, then such contributory negligence is matter of defence, in confession and avoidance, and must be established by a preponderance of testimony by the defendant: *Texas, &c., Ry.* v. *Orr,* 46 Ark.

As a general rule railroad companies are bound to keep in a safe condition all portions of their platforms and approaches thereto to which the public do or would naturally resort, and all portions of their station grounds, reasonably near to the platform, where passengers or those who have purchased tickets to take passage on the cars, or those debarking from them would naturally or ordinarily be likely to go, and especially by those routes and methods which the company has established by its own customs and practice: *Id.*

That an injured party does not adopt the best remedies, or follow implicity the directions of his physician, will not excuse a wrongful injury

which produces as its direct effect, a disease from which death ensues. The law fixes no exact standard here, and it should be left to the jury as to the reasonableness of his conduct, and whether or not the death was caused by the injury: *Id.*

Railroads—Passengers waiting at Station.—Contributory Negligence —Jumping from a Moving Train.—A person waiting at a railroad station for passage upon a train soon to depart, who is invited by the ticket agent to sit in an empty car standing on the side track while the station room was being cleaned, is entitled to the same protection from the company while in the car as if in the regular waiting room; in either place the person is a passenger in the care of the company: *Shannon* v. *Boston & Albany Rd.*, 78 Me.

For a passenger to jump upon or off of a moving train is *prima facie* negligence; if injured thereby, it is incumbent on him, in an action against the railroad, to prove a reasonable excuse for the act: *Id.*

Whether a passenger had or not a reasonable excuse for jumping upon or off of a moving train is usually a question for the jury: an extreme case either way may be determined by the court. Fear of personal danger is not the only excuse that will exonerate one in jumping from a moving train. A passenger may in some cases be justified in alighting from a moving train merely to save himself from serious inconvenience; all depends upon the speed of the train and the attendant circumstances: *Id.*

Stock falling in Pit on Neighbor's Premises.—The defendant dug a pit under his cotton gin for a cotton-press, near the public highway, and left it unenclosed, and corn and cotton seed scattered about it. The plaintiff's cow fell into the pit and was killed. *Held,* that the defendant was guilty of negligence and must pay the value of the cow; and that the plaintiff was not guilty of contributory negligence in turning his cow out on the commons remote from the gin: *Jones* v. *Nichols*, 46 Ark.

Officer.

Change of Salary by smaller Appropriation—Interpretation by Statutes—Implied Repeal.—A statute fixing the annual salary of a public officer at a named sum, without limitation as to time, should not be deemed abrogated or suspended by subsequent enactments which merely appropriate a less amount for the services of that officer for particular fiscal years, and which contain no words that expressly or by clear implication modify or repeal the previous law: *United States* v. *Fisher*, 109 U. S. 143; and *United States* v. *Mitchell*, Id. 146, distinguished: *United States* v. *Langston*, S. C. U. S., Oct. Term 1885.

Partnership. See *Contract; Exemption.*

Railroad. See *Common Carrier; Master and Servant; Negligence; Tax and Taxation.*

Crossings—Land Damages—Constitutional Law.—In assessing damages to be recovered by a railroad corporation against a town for its land taken by locating town ways across its track, the jury may take into consideration, in order to ascertain present value, not only the use which the railroad now makes of its located limits at the crossings, but what use it may reasonably be expected it will in the near future make of the

same: *Portland and Rochester Rd. Co.* v. *Inhabitants of Deering*, 78 Me.

It is not an unconstitutional exercise of legislative power to require a railroad corporation to build and maintain highway crossings laid out over its track, so far as such crossings are within its located limits, although the law imposing such burden was enacted since the railroad was built, the company being subject to the general laws of the state in existence when its charter was granted and such as should be thereafter passed: *Id.*

Damages are not recoverable, by a railroad company against a town which has laid out ways over its track, for the interference and inconvenience occasioned to its business by the opening of the new ways, nor for any increased risks or increased expense in running its trains caused thereby: *Id.*

Power to make Lease or other Contract of Control—Effect of such Contract when Ultra Vires.—Unless specially authorized by its charter or aided by some other legislative action, a railroad company cannot, by lease or other contract, turn over to another company, for a long period of time, its road and all its appurtenances, the use of its franchises, and the exercise of its powers, nor can any other railroad company, without similar authority, make a contract to run and operate such road, property and franchises of the first corporation. Such a contract is not among the ordinary powers of a railroad company, and is not to be inferred from the usual grant of powers in a railroad charter: *Thomas* v. *Rd. Co.*, 101 U. S. 91, reaffirmed: *Penn Co.* v. *St. Louis, Alton, &c., Rd.*, S. C. U. S., Oct. Term 1885.

The doctrine that acts may be done and property change hands, under void contracts which have been fully executed, with which courts will not interfere, is sound, but any relief in such cases must be based on the invalidity of the contract, and not in aid of its enforcement. While the plaintiff in this case might recover, in an appropriate action the rental value of the use of its road against the lessee company, the other defendants who had received nothing, but had been paying out money under a void contract, cannot be compelled to pay more money under the same contract: *Id.*

Sale.

When Title passes—Trover.—Flour was ordered by brokers for Dub & Co., with this direction: "Ship as soon as you can, forty-five days draft, to B. Dub & Co." Dub & Co. assigned it to Matthewson, as their assignee, without returning the draft signed, it being sold with the bill of lading and an invoice stating the terms as forty-five days of acceptance. *Held*, the giving of the acceptance was a condition precedent to the acquisition of title by B. Dub & Co., and the sellers of the flour might maintain trover therefor against the assignee: *Matthewson* v. *Belmont Co.*, 73 or 74 Ga.

Set off.

Purchase by Factor in own Name.—If a factor sell in his own name, as owner, and does not disclose his principal, and acts ostensibly as the real owner, although the principal may afterwards bring his action upon the contract against the purchaser, yet the latter, if he *bona fide* dealt

with the factor as owner, will be entitled to set off any claim he may have against the factor in answer to the demand of his principal: *Ruan* v. *Gunn*, 73 or 74 Ga.

STATUTE. See *Officer*.

SURETY. See *Guaranty*.

Exemption—Presumption as to Funds in hands of Defaulting Officer.—The security on the bond of a defaulting county treasurer, against whom an execution has issued for funds belonging to the county in the hand of the treasurer, cannot take a homestead, which will exempt his property from the debt incurred by reason of his obligation on the bond: *Mc Watty* v. *Jefferson Co.*, 73 or 74 Ga.

The presumption would be that the funds in the hands of the treasurer arose at least in part from taxes, and no evidence was offered by the surety in this case that the fund or any part of it came from other sources, though the treasurer, his principal in the bond, was bound to keep a correct record of all funds received by him and the source from which they came: *Id.*

TAX AND TAXATION.

Assessment including Property not Legally Assessable—Railroads—Fences not part of the Roadway.—An assessment of different kinds of property, as a unit, which includes property not legally assessable by the Assessment Board, and in which the part of the tax assessed against the latter property, is not separable from the other part is invalid, and will not support an action for the recovery of the entire tax so levied: *Santa Clara County* v. *South Pacific Rd.*, S. C. U. S., Oct. Term, 1885.

The fences erected upon the line of a railroad, between its roadway and the land of conterminous proprietors, cannot be assessed under the head of "roadway": *Id.*

TELEGRAPH.

Damages—Contract.—A verbal contract that the plaintiff should labor for a manufacturer at two dollars and twenty-five cents per day, commencing Monday, September 1st, but for no stipulated period, is defeasable at the will of either party, and a telegraph company is liable, for nominal damages only, in not delivering a telegram to the plaintiff, seasonably notifying him of the terms of the contract, whereby he lost all benefit from it: *Merrill* v. *Western Union Tel. Co.*, 78 Me.

TRIAL.

Evidence—Personal Examination of Party for Personal Injury.—Where a plaintiff in an action for personal injuries alleges that they are of a permanent nature, the defendant is entitled, as a matter of right, to have the opinion of a surgeon upon his condition, based upon personal examination; and the court should, upon demand of the defendant, compel the plaintiff to submit to such examination. But where the evidence of experts is already abundant, the court must exercise its sound discretion in compelling or refusing the examination; and its action is subject to review in case of abuse: *Sibley* v. *Smith*, 46 Ark.

Trust and Trustee.

Creation of Trust—Presumption as to Interests of Beneficiaries.—Sect. 5573, Howell's Stat. Michigan, provides that "express trusts may be created," * * * "for the beneficial interest of any person or persons, when such trust is fully expressed and clearly defined upon the face of the instrument creating it, subject to the limitations as to time prescribed in this title:" *Held*, that the letters, statements and agreements, which passed between the plaintiff and defendant, as evidence in this case, are sufficient to establish an express trust within the meaning of the statute. The objection that the individual interests of the respective beneficiaries are not stated, is met by the rule, which prevails in Michigan, as in all other states where the principles of the common law are observed, that where a conveyance of land is made to two or more persons, and the instrument is silent as to the interest which each is to take, the presumption will be that their interests are equal: *Loring* v. *Palmer*, S. C. U. S., Oct. Term 1885.

Usury.

What Amounts to Relief in Equity.—Presumption as to Laws of Another State.—It is not usury to add the interest on several notes to the principal, and then add to this sum the interest on it at ten per cent. per annum for one year, and then take a new note for this last sum payable one year after date, with interest at ten per cent. per annum after maturity, in payment of the old notes: *Grider* v. *Driver*, 46 Ark.

It is not usury for one to sell property on a credit for a higher price than he would have sold for cash, with legal interest added; but if the sale be really made on a cash estimate, and time be given to pay the same, and an amount is assumed to be paid greater than the cash price with legal interest would amount to, this is an agreement for forbearance that is usurious: *Id.*

A plaintiff will not be relieved in equity from a usurious contract except upon condition that he pays the principal and legal interest: *Id.*

Although it will be presumed in many cases, in the absence of a contrary showing, that the laws of other states are the same as our own, the presumption will not be indulged where our laws impose a penalty or work a forfeiture as in the case of usury: *Id.*

Excessive Interest Paid after Maturity of Debt.—Where the maker of a promissory note payable *in futuro*, with 10 per cent. interest from date, omitting the words "until paid," pays that rate of interest after the maturity of the note, he cannot recover the excess paid over 6 per cent. accruing after maturity: *Rector* v. *Collins*, 46 Ark.

Vendor and Vendee.

Purchase by Vendee of Outstanding Incumbrance.—If a vendee of land remaining in possession, buys in an outstanding incumbrance, he will not be permitted to set up an adverse title under it. The purchase enures to the benefit of the vendor's title, and the vendee can only abate the unpaid purchase-money, or in case he has paid this, recover the amount he has expended by action on the covenant broken or other proper remedy: *Bush* v. *Adams*, 21 or 22 Fla.

Witness. See *Criminal Law.*